

**ATTENTION****MANDATORY REQUIREMENTS FOR VENDORS**

**This RFP is issued by the Bureau of Purchase and Property and contains the official RFP Proposal specifications. This RFP and the contained specifications supercede any previous documentation you may have received from another source. The Bureau of Purchase and Property must issue any changes and/or amendments to this RFP.**

**For your submission to be considered as responsive the following is required:**

- **Proposals must be delivered in sealed containers and permanently marked as per the specifications in the RFP.**
- **Your submission must include an “ORIGINAL” and the required number of “COPIES”.**
- **“ORIGINALS” and all “COPIES” must be clearly and permanently marked on the cover.**
- **Printouts of complete original Addenda (if any issued) in numerical sequence, filled out and signed by a person who is authorized to legally obligate your company.**
- **A printout of this entire RFP Proposal package as received, must be completed and returned in its entirety, as part of your “ORIGINAL” response.**
- **This Bureau of Purchase and Property Signature Page must be completed and returned signed in the space provided, by a person who is authorized to legally obligate your company.**
- **Sealed and labeled RFP proposals must be delivered to the NH Bureau of Purchase and Property by 2:30 PM on the specified date or they will be deemed non-responsive.**
- **Proposals received that are not complete will not be considered acceptable. Please read the RFP for detailed instructions regarding all of the above requirements.**

**Contact: Robert Lawson at Bureau of Purchase and Property, 603 271-3147 if you need further clarification of these instructions.**

**BUREAU OF PURCHASE AND PROPERTY SIGNATURE PAGE**Date: August 24, 2004Proposal No.: SKI-2005Date of Proposal Opening: September 20, 2004Time of Proposal Opening: 2:00 P.M.PLEASE DIRECT ANY QUESTIONS REGARDING THIS RFP TO: Tamra GrossmanTEL. NO.: (603) 271-3180E-MAIL.: tamra.grossman@nh.govBID INVITATION FOR: Department of Resource and Development

**OFFER.** The undersigned hereby offers to sell to the State of New Hampshire the commodities or services indicated in the following page(s) of this RFP at the price(s) quoted, in complete accordance with all conditions of this RFP and the State of New Hampshire Contract Standard Terms and Conditions (Form P37).

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Tel.: (local) \_\_\_\_\_ (Toll Free) \_\_\_\_\_

Fax: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

(SIGNATURE)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

This document must be signed by a person who is authorized to legally obligate the bidder. A signature on this document indicates that all State of New Hampshire terms and conditions are accepted by the bidder and that any and all other terms and conditions submitted by the bidder are null and void, even if such terms and conditions have terminology to the contrary. Bidder shall also be subject to State of New Hampshire terms and conditions as stated on the reverse of the purchase order.

Date: August 25, 2004

Coverage Sought: Ski Area Liability Insurance – Cannon Mountain

Contract Period: November 1, 2004 – November 1, 2007, Three Years

Date Proposals Due: September 20, 2004 no later than 2:00 p.m. EST

Proposals to be delivered to: Department of Administrative Services  
Division of Plant and Property  
State House Annex, Room 102  
25 Capitol Street  
Concord, NH 03301

#### **Contents of this Request for Proposals**

- General Bidding Instructions
- General Program Information
- Proposal Specifications
- Quotation Worksheet - Offer

Exhibit A- Standard State of New Hampshire Contract Provisions

Exhibit B- Certificate of Authority

Exhibit C- Loss Data

#### **Notice to Prospective Bidders**

The Department of Administrative Services, Bureau of Risk Management in accordance with the provisions of RSA 227:2 and 21-I: 8, II (e) on behalf of the Department of Resources and Economic Development invites proposals for insurance tailored to meet the special needs of Cannon Mountain Ski Facility. For those interested in offering proposals the section titled Proposal Specifications provides coverage and servicing requirements. Proposals may be submitted only by an authorized licensed resident agent of a company or companies whose policies are offered herein and which are licensed to transact business in the State of New Hampshire. If submitted on behalf of an agency, the proposal must also be signed by an official of the agency as appearing on the agency records with the New Hampshire Insurance Department.

It shall be understood that no prospective bidder will in any manner “tie up” markets in an effort to restrict access to other agencies wishing to quote. Agents submitting proposals shall disclose the identity of all markets they had approached and provide a short narrative of each market’s response. Bidders must report the premium each market requested to provide the State coverage as sought in these specifications. Agents shall be allowed to offer a maximum of two (2) proposals and agree not to block other markets from offering coverage through another agent. Determination of behavior out of compliance with this request shall be grounds for disqualification.

#### **Submission of Proposals**

Proposals must be submitted on the attached forms, properly signed, sealed, and returned by the date and time specified in the envelope furnished for this purpose. Alternate plans or additional information deemed pertinent may be added. The coverage and services purchased in accordance with this Request for Proposal (RFP) shall be for a term of three (3) years, commencing on November 1, 2004. An original and two copies of each proposal must be provided at the time proposals are submitted. All proposals must contain a letter of transmittal, signed by an individual(s) having the authority to bind coverage for the quoting companies.

Proposals must be signed and submitted in sealed envelopes before 2:00 p.m. EST on September 20, 2004 to:  
Department of Administrative Services

Division of Plant and Property  
 State House Annex, Room 102  
 25 Capitol Street  
 Concord, NH 03301

Envelopes must be clearly marked as follows: RFP – Ski Area Liability Insurance. Late proposals will not be considered and telegraphic or facsimile bids will not be accepted.

The bid opening will be held in the conference room at the Department of Administrative Services, Division of Plant and Property, State House Annex, Room 102, 25 Capitol Street, Concord, NH 03301. The bid opening is open to the public and all interested parties are invited to attend. Only the names of the bidders submitting proposals and the companies offering coverage will be announced at that time. No further details will be released until each offer is examined to determine it has met specifications and a complete evaluation has been conducted with an award made. All bidders offering proposals will be notified in writing of the vendor selected for award of this contract.

**PLEASE NOTE:**

Rates and rating plans quoted herein must be on file with the New Hampshire Department of Insurance in accordance with the laws and rules of the Department on or before September 20, 2004. With reference to the foregoing, worksheets and other data to substantiate rates and premiums offered must accompany the offered proposal.

**Method of Award**

Proposals shall be evaluated in accordance with RSA 21-I:22-a and 21-I:22-b. Awards will be made that represent “the best interest of the State of New Hampshire”. Bidders shall demonstrate for themselves, and any subcontractors they plan to use, that they have the organization, experience, and technical skills, financial resources and proven track record to effectively provide the services required.

The following criteria and weights shall be applied in evaluating proposals:

| <b><u>Weight</u></b> | <b><u>Criteria</u></b> |
|----------------------|------------------------|
| 40%                  | Lowest Rate            |
| 40%                  | Scope of Coverage      |
| 20%                  | 3 Year Rate Guarantee  |

The State of New Hampshire reserves the right to accept any and all proposals, or parts of proposals, with or without cause, and in such event the proposer submitting a bid makes such a proposal and submission without recourse. The State of New Hampshire reserves the right to waive technicalities to ensure a program providing the greatest benefit to the State. Vendors preparing responses will not be compensated for their proposal efforts.

**Questions**

Questions shall be submitted in writing by 2:00 p.m. EST on September 1, 2004. The Bureau shall provide assistance or additional information of a reasonable nature, which might be required by interested bidders. Those submitting questions shall provide an email address [if available] and fax number for the Bureau’s use in responding. The questions and answers will be consolidated and responded to on a single written addendum. This addendum will be made available to all bidders on or about September 3, 2004. Questions may be submitted in writing to:

The Bureau of Risk Management  
 Ski Operations - RFP  
 State House Annex, Room 412  
 25 Capitol Street  
 Concord, NH 03301  
 or  
 Fax #: (603) 271-7049  
 Or

Email: [tamra.grossman@nh.gov](mailto:tamra.grossman@nh.gov)

GENERAL BIDDING INSTRUCTIONS

- 1) No warrant is made or implied as to information contained in these specifications, or that may be obtained by any bidder or underwriter for use in formulating a proposal or while subsequently operating under the awarded contract.
- 2) Insurance companies utilized must be admitted to do business in New Hampshire, or be on the Insurance Commissioner's list of approved non-admitted companies. The company's policyholders rating contained in the latest edition of Best's Insurance Reports will be an important selection criteria. Company ratings of A and A+ are requested. All insurance policies quoted shall be on a form approved by the State of New Hampshire Insurance Department.
- 3) All companies, agents or underwriters submitting proposals are construed to have agreed to all conditions set forth in the General Bidding Instructions, as well as those which are part of the Special Servicing Requirements and Detailed Bid Specifications, unless otherwise stated.
- 4) The State of New Hampshire reserves the right to reject any and all proposals, or to award coverage in the manner deemed in the best interest of the State.
- 5) Agents submitting proposals shall be licensed in New Hampshire and shall maintain an office that is open during regular business hours, and at minimum, maintain office hours of 9:00 a.m. - 5:00 p.m or 8:00 am – 4:00pm.
- 6) All proposals shall remain valid for 90 days from the date of submission.
- 7) All quotes shall be submitted on the quotation worksheet included herewith on page 10.
- 8) SPECIMEN POLICIES, RIDERS AND ENDORSEMENTS SHOWING THE INTENDED CONTRACT SHALL ACCOMPANY ALL PROPOSALS IN DUPLICATE.
- 9) The bid price submitted in the proposal shall be the invoice price, and must reflect all taxes, fees, etc. that are to be included.
- 10) Proposals shall include a description of the claims processing facilities. This description shall identify the entity responsible for claim processing by name of company(s), name(s) of individual(s) involved, the location(s) of such services, and monetary draft authority if applicable.
- 11) Proposals shall include descriptions of loss prevention and engineering services to be offered as part of this contract. The proposed frequency of safety advice or assistance and loss prevention inspections shall be outlined in detail.
- 12) NO PROPOSAL WILL BE ACCEPTED VIA FAX.
- 13) This proposal is subject to RSA 21-I: 13a, II.
14. Exhibits A & B shall be signed by a representative of the agency and/or company possessing legal authority to bind such agency and company to the terms and pricing conditions contained in this RFP.
- 15) With limited time and resources available to respond to bidders' questions, the Bureau of Risk Management will not be available to answer inquiries by telephone. All inquiries of the Bureau of Risk Management related to this proposal must be submitted in writing as described earlier in this proposal.

16) Bidders interested in receiving a copy of the insurance policy currently in force shall follow the same instructions outlined in item #15 above.

17) This proposal may include additional coverage or servicing elements, but only after offering pricing which meets specifications contained in this RFP.

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PROPOSALS NOT MEETING THE REQUESTED SPECIFICATIONS  
MAY BE CONSIDERED INCOMPLETE

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**GENERAL PROGRAM INFORMATION****CANNON MOUNTAIN**

## Definition of Area:

The four season operation of the Cannon Mountain Aerial Tramway and all ski lifts are generally within an area bounded by the United States Forest Service, extended to highway Route 118, to Highway 93, to an interchange south of the valley station, thence by imaginary line to the Observation platform on the summit of Cannon Mountain, and the Taft ski trail extending onto Mount Jackson, but not intended to include the Lonesome Lake Trail, nor the trail leading from the Rim Trail leading to the Profile. There is a snowmobile and ski touring trail extending boundary-to-boundary south to north. The policy shall cover the operations of all aerial tramway chairlifts and surface lifts, slopes and trails within the park boundary. Lifts presently include one aerial tramway, two quad chairs, three triple chairs, and one surface lift. The policy shall also cover ski school, ski repair and rental, and ski retail shop.

Cannon Mountain has been in operation since 1938. The ski trails cover a vertical drop of approximately 2146 feet. These runs vary in difficulty from beginner (approximately 30%), intermediate (approximately 50%), expert (approximately 20%). The target opening date is normally late November or early December and target closing date of usually early in min-April. Emergency response times have been recorded at 10 minutes for emergency team, 10 minutes for fire services, 10 minutes for ambulance and 30-40 minutes for air lift.

**Lift Information:**

| <b><u>TYPE OF LIFT</u></b>           | <b><u>MANUFACTURER</u></b> | <b><u>YEAR INSTALLED</u></b> | <b><u>SPECIFICAITONS</u></b>   |
|--------------------------------------|----------------------------|------------------------------|--|
| Tramway                              | Nuvo Soudio                | 1980                         | Length 5363 ft<br>Capacity (winter) each of 2 cabs,<br>70 passengers, 1 operator<br>Capacity (summer) each of 2 cabs,<br>80 passengers, 1 operator |
| *Quad Chair<br>(Detachable)          | C-Tec                      | 1999                         | Length 5211 ft<br>Capacity 2400 per hour   |
| Quad Chair                           | Dopplemayer                | 1990                         | Length 2350 ft.<br>Capacity 2100 per hour  |
| Zoomer Chair Lift<br>(triple)        | Dopplemayer                | 1980                         | Length 1900 ft<br>Capacity 1800 per hour   |
| *Triple Chair                        | Dopplemayer                | 1999<br>(Reinstated)         | Length 2488 ft.<br>Capacity 1800 per hour  |
| *Triple Chair                        | Dopplemayer                | 1999<br>(Reinstated)         | Lengt 762 ft.<br>Capacity 140per hour  |
| Pony Lift<br>(Paddle type hold onto) | Stadeli                    | 1975                         | Length 600 ft  |
| Wonder Carpet                        | Star Lifts                 | 2001                         | 80' Conveyor Lift  |

**CONCESSION COVERAGE**

Sale of food is contracted out to a concessionaire with the requirement that insurance certificates be furnished to the State indicating both concessionaire and the State of New Hampshire as named insured. This concessionaire is responsible for purchasing their own insurance and carry coverages as follows:

| <u>Concessionaire</u>   | <u>Bodily Injury Coverage</u> | <u>Property Damage</u> |
|---|-------------------------------|------------------------|
| Food-Franconia  | \$1,000,000 per occurrence    | \$100,000              |
| Off Highway<br>Recreation Vehicle<br>Landowner Liability<br>Insurance (State of NH named<br>Additional insured) | \$2,000,000 per occurrence    | \$ 50,000              |

\*\*\*\*Requests for information as to area, frontage, remuneration, physical characteristics of the facilities, and any other necessary detailed information should be submitted in writing to the Business Administrator, Department of Resources and Economic Development, P.O. Box 1856, Concord, New Hampshire 03302-1856 on or before September 1, 2004. The following documents are also available for view by requesting them from the Business Administrator identified above:

1. Lift Tickets
2. Evacuation Procedures
3. Tram/Chairlift Operating Instructions
4. Loss Runs 11/1/1990 – 11/1/2003

#### SUMMARY OF SKIER DAYS

|             |         |
|-------------|---------|
| 1996 – 1997 | 92,208  |
| 1997 – 1988 | 113,951 |
| 1998 – 1999 | 105,817 |
| 1999 – 2000 | 100,601 |
| 2000 – 2001 | 130,656 |
| 2001 – 2002 | 116,637 |
| 2003-2004   | 109,562 |

#### RECEIPTS HISTORY

| <u>Operations</u>                          | <u>Receipts<br/>Fiscal Year 2000</u> | <u>Receipts<br/>Fiscal Year 2001</u> | <u>Receipts<br/>Fiscal Year 2003</u> |
|--|--------------------------------------|--------------------------------------|--------------------------------------|
| Ski Lifts                                  | \$1,609,166                          | \$ 2,259,758                         | \$1,575,637                          |
| Ski School<br>(incl. Nursery/daycare)      | \$ 221,362                           | \$ 272,438                           | \$281,293                            |
| Ski Shop Sales                             | \$ 215,825                           | \$ 265,393                           | \$ 258,820                           |
| Summer Retail                              |                                      |                                      | \$ 307,735                           |
| Ski Equipment Rental<br>(incl. Snowboards) | \$ 224,187                           | \$ 345,812                           | \$ 311,557                           |
| Racing Camps                               | \$ 0                                 | \$ 0                                 | \$ 0                                 |

#### RECEIPTS HISTORY



ContinuedOperationsReceipts  
FY 2000Receipts  
FY 2001Receipts  
FY 2003

## Other

|                    |            |            |            |
|--------------------|------------|------------|------------|
| Boat Rentals       | \$ 0       | \$ 0       | \$16,000   |
| Bike Rentals       | \$ 18,419  | \$ 0       | \$ 0       |
| Summer Lift & Tram | \$ 766,449 | \$ 839,488 | \$ 665,494 |
| Building Rental    | \$ 0       | \$ 0       | \$ 0       |
| Beach              | \$ 43,138  | \$ 34,544  | \$ 3,564   |
| Camping            | \$ 12,572  | \$ 10,223  | \$ 0       |
| Conventions        |            |            |            |

## **PROPOSAL SPECIFICATIONS**

The undersigned, a resident licensed agent, or company, hereby agrees to furnish insurance to cover Cannon Mountain operations for the period November 1, 2004 – November 1, 2007. Coverage shall be provided in a single policy as described within the specifications below:

1. The policy shall have a provision for automatic coverage of additional premises and lifts acquired during the term of the policy.
2. The policy shall provide that the named insured be regarded as an ordinary corporation instead of a Governmental subdivision with respect to any claims arising out of the policy within the policy limits.
3. The policy shall provide for one annual inspection as provided under Rules and Regulations of Par 2.3.4.1., 3.3.2.1, 4.3.4.3. and 5.3.4.1. and the ANSI B77.11982.
4. The policy shall be written on an annual basis for a period not to exceed three (3) years, and subject to the mutual agreement of all parties.
5. The policy to be issued is subject to all pertinent laws of the State of New Hampshire with special reference to RSA 412:3.
6. Proposals shall also include coverage for the use of the “sit ski”. This coverage should extend to all lifts and trails at Cannon subject to approval of the Passenger Tramway Boards.
7. The offer shall establish an annual premium based on the coverage limits specified below:

Effective: 11/1/2004 – 11/1/2007

### Primary Commercial General Liability

|           |   |
|-----------|---|
| \$ -0-    | General Aggregate (None)                  |
| \$300,000 | Products & Completed Operations Aggregate |
| \$300,000 | Per Occurrence                            |
| \$300,000 | Personal & Advertising Injury             |
| \$ 50,000 | Fire Legal Liability                      |
| \$ -0-    | Medical Payments (Not Included)           |

### **Current ISO Form**

Notable Exclusions: Nuclear Energy; Asbestos; Pollution; Bodily Injury to Employees; Care, Custody and Control – real and personal; Inverted Aerial Maneuvers; Grass Skiing; Airport/Aircraft/Hot Air Balloon; Amusement Devices; Fireworks; RAP Music; Rental Vehicles; Miscellaneous Snow Sledding; Animal; Alpine Slides; Real Estate Agents E & O; Saddle Animals; Water Slides; Medical Payments

### **Deductible**

\$1,000 Per Occurrence/\$10,000 Aggregate

8. Additional offers may also be submitted utilizing different coverage levels and elements after satisfying minimum requirements.
9. The Quotation Worksheet found on page 10 shall be completed in its entirety to be considered a valid offer. The offer must allow the State the option of accepting a rate guarantee with premium fluctuations based on audited receipts and a second option allowing for a flat rate premium for the three year contract term. The rate guarantee option shall specify the receipts or rate base and corresponding rate for each operation relied on to develop the premium offered for the period 11/1/2004 – 11/1/2007. The offer must also specify the Minimum Earned Premium, or a 0 if none is required.

## **QUOTATION WORKSHEET – OFFER**

The undersigned offers coverage and limits as described for Cannon Mountain to take effect November 1, 2004 as stipulated in the following Rate Table. The undersigned further guarantees the premium rates as specified in the Rate Table for the full term of the contract. November 1, 2004 – November 1, 2007. Premium shall initially be calculated for each period by utilizing receipts collected in the previous year. Voluntary Audit reports shall be completed by Cannon Mountain at the end of each period to allow for premium adjustment.

**RATE TABLE****OPERATIONS****RECEIPTS OR RATE BASE****RATES**

|                         |          |             |
|-------------------------|----------|-------------|
| Ski Lifts               | \$ _____ | X _____/100 |
| Ski School              | \$ _____ | X _____/100 |
| (incl. Nursery/daycare) |          |             |
| Ski Equipment Rental    | \$ _____ | X _____/100 |
| (incl. Snowboards)      |          |             |
| Racing Camps            | \$ _____ | X _____/100 |
| Other:                  |          |             |
| Boat Rentals            | \$ _____ | X _____/100 |
| Bike Rentals            | \$ _____ | X _____/100 |
| Summer Lift & Tram      | \$ _____ | X _____/100 |
| Building Rental         | \$ _____ | X _____/100 |
| Beach                   | \$ _____ | X _____/100 |
| Camping                 | \$ _____ | X _____/100 |

**Option I** - Premium for 11/1/2004 – 11/1/2007 (subject to audit) \$ \_\_\_\_\_

**Option II** – Flat Rate Premium for 11/1/2004 – 11/1/2007  
(Paid annually in 3 equal installments) \$ \_\_\_\_\_

Minimum earned premium \$ \_\_\_\_\_

The policy or policies will be issued by non-participating stock insurance company or companies as follows:

**NAME OF COMPANY****AMOUNT OF COVERAGE**

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

or by mutual or participating stock insurance company or companies as follows:

**DIVIDEND PAYING****NAME OF COMPANY****AMOUNT OF COVERAGE****RECORD FOR LAST  
FIVE YEARS**

|       |       |       |
|-------|-------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

The Commissioner of Administrative Services, Bureau of Risk Management, coupled with the Department of Resources and Economic Development, shall determine which proposal is in the best interest of the State.

The policy shall take effect at 12:01 a.m., November 1, 2004, although the contract is contingent upon approval by Governor and Council. The undersigned agrees to bind coverage effective November 1, 2004 and suspend invoicing until contract award has been voted on by Governor and Council. No interest will be charged to the State for any delay related to the process.

Such further information as the undersigned desires to submit in connection with its proposal may be furnished by letter and made a part of this proposal by reference.

NAME OF AGENCY \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature and Date of Agency Authorized Official)

\*\*\*\*\*  
\*\*\*\*\*  
THIS OFFER MUST BE SIGNED AND DATED TO BE CONSIDERED FOR AWARD.  
\*\*\*\*\*  
\*\*\*\*\*

Subject: \_\_\_\_\_

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS****1. Identification and Definitions.**

1.1 State Agency Name

1.2 State Agency Address

1.3 Contractor Name

1.4 Contractor Address

1.5 Account No.

1.6 Completion Date

1.7 Audit Date

1.8 Price Limitation

1.9 Contracting Officer for State Agency

1.10 State Agency Telephone Number

1.11 Contractor Signature

1.12 Name &amp; Title of Contractor Signor

1.13 Acknowledgment: State of \_\_\_\_\_, County of \_\_\_\_\_

On \_\_\_\_\_, before the undersigned officer, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that s/he executed this document in the capacity indicated in block 1.12.

1.13.1 Signature of Notary Public or Justice of the Peace

[Seal]

1.13.2 Name &amp; Title of Notary or Justice of the Peace

1.14 State Agency Signature(s)

1.15 Name/Title of State Agency Signor(s)

1.16 Approval by Department of Personnel (Rate of Compensation for Individual Consultants)

By: \_\_\_\_\_

Director, On: \_\_\_\_\_

1.17 Approval by Attorney General (Form, Substance and Execution)

By: \_\_\_\_\_

Assistant Attorney General, On: \_\_\_\_\_

1.18 Approval by the Governor and Council

By: \_\_\_\_\_

On: \_\_\_\_\_

**EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("the State"), engages contractor identified in block 1.3 ("the Contractor") to perform, and the Contractor shall perform, that work or sale of goods, or both, identified and more particularly described in EXHIBIT A incorporated herein ("the Services").

**3. EFFECTIVE DATE: COMPLETION OF SERVICES.**

3.1 This agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Council of the State of New Hampshire approve this agreement, ("the Effective Date").

3.2 If the date for commencement in Exhibit A precedes the Effective Date all services performed by Contractor between the commencement date and the Effective Date shall be performed at the sole risk of the contractor and in the event that this Agreement does not become effective, the State shall be under no obligation to pay the contractor for any costs incurred or services performed; however that if this Agreement becomes effective all costs incurred prior to the effective date shall be paid under the terms of this Agreement. All services must be completed by the date specified in block 1.6.

**4. CONDITIONAL NATURE OF AGREEMENT.** Notwithstanding anything in this agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the account identified in block 1.5 in the event funds in that account are reduced or unavailable.

## 5. CONTRACT PRICE: LIMITATION ON PRICE: PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in Exhibit B, incorporated herein.

5.2 The payment by the State of the contract price shall be the only, and the complete, reimbursement to the Contractor for all expenses, of whatever nature, incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by RSA 80:7 through 7-C or any other provision of law.

5.4 Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the price limitation set forth in block 1.8 of these general provisions.

## 6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS: EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to civil rights and equal opportunity laws. In addition, the vendor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap or national origin and will take affirmative action to prevent such discrimination.

6.3 If this agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States, access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants and conditions of this Agreement.

## 7. PERSONNEL

7.1 The performance of the Services shall be carried out by employees of the Contractor. The Contractor shall at its own expense, provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 The Contractor shall not hire, and shall permit no subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final.

## 8. EVENT OF DEFAULT, REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Events of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule; or

8.1.2 failure to submit any report required hereunder; or

8.1.3 failure to perform any other covenant or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this agreement, effective two (2) days after giving the Contractor notice of termination; and

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor; and

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and

8.2.4 treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

## 9. DATA: ACCESS; CONFIDENTIALITY; PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 On and after the Effective Date, all data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by RSA 91-A or other existing law. Disclosure pursuant to a right to know request shall require prior written approval

of the State.

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion to the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("the Termination Report") describing in detail all Services performed, and the Contract Price earned, to and including the date of termination. To the extent possible, the form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in EXHIBIT A.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, worker's compensation or other emoluments provided by the State to its employees.

12. **ASSIGNMENT, DELEGATION AND SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Services shall be delegated or subcontracted by the Contractor without the prior written consent of the State.

13. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

## 14. INSURANCE AND BOND.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, both for the benefit of the State, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per incident; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 of these general provisions, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modifications of the policy earlier than 10 days after written notice thereof has been received by the State.

15. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that event, or any subsequent Event. No express failure of any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Contractor.

16. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, above.

17. **AMENDMENT.** This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

18. **CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns.

19. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this agreement shall not be construed to confer any such benefit.

20. **SPECIAL PROVISIONS.** The additional provisions set forth in EXHIBIT C hereto are incorporated as part of this Agreement.

21. **ENTIRE AGREEMENT.** This agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

**Exhibit B****CERTIFICATE OF VOTE/CERTIFICATE OF AUTHORITY**

I, \_\_\_\_\_ Hereby certify that I am duly elected

\_\_\_\_\_ of \_\_\_\_\_

I hereby certify the following is a true copy of a vote taken at a meeting of the Board of Directors of the Corporation, duly called and held on \_\_\_\_\_, at which a quorum of the Board was present and voting.

VOTED: That \_\_\_\_\_ is duly authorized to enter into a specific contract namely

\_\_\_\_\_ With \_\_\_\_\_ and

further authorized to execute any documents which may in his judgment be desirable or necessary to effect the purpose of this vote.

I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of

\_\_\_\_\_, and that \_\_\_\_\_ is duly elected

\_\_\_\_\_ of this Corporation.

DATED: \_\_\_\_\_ ATTEST: \_\_\_\_\_ (Affix Corp. Seal)

**EXHIBIT C – SUMMARY LOSS DATA****Policy # GLA6260955 (11/14/04)****AGI Insurance**

Indemnity Paid: \$ 0.00  
 Expenses Paid: \$ 0.00  
 Reserves Remaining: \$10,000  
 Total Claims: 1 (open)

Premium: \$ 117,862  
 Based on receipts: \$ 2,997,324

**Policy #374994170 (11/1/96 – 11/1/97)****TIG Insurance**

Indemnity Paid: \$4,734  
 Expenses Paid: \$1,596  
 (Audited)  
 Reserves Remaining: \$2,000  
 Total Claims: 5 (1 open, 4 closed)

Premium: \$64,650  
 Based on receipts: \$4,900,344

**Policy #374994170 (11/1/97 – 11/1/98)****TIG Insurance**

Indemnity Paid: \$3,547  
 Expenses Paid: \$1,643  
  
 Reserves Remaining: 0  
 Total Claims: 2 (all closed)

Premium: \$69,408  
 Based on Receipts: \$5,286,203  
 (Audited)

**Policy #374994170 (11/1/98 – 11/1/99)****TIG Insurance**

Indemnity Paid: 0  
 Expenses Paid: \$345  
  
 Reserves Remaining: 0  
 Total Claims: 2 (all closed)

Premium: \$35,366  
 Based on Receipts: \$2,741,740  
 (Audited)

**Policy #380281930 (11/1/99 – 11/1/00)****TIG Insurance**

Indemnity Paid: \$2,500  
 Expenses Paid: \$12,379  
  
 Reserves Remaining: 100,000  
 Total Claims: 4 (1 open, 3 closed)

Premium: \$29,752  
 Based on Receipts: \$3,111,118

**Policy # (11/1/00 – 11/1/01)****TIG Insurance**

Indemnity Paid: 0  
 Expenses Paid: 0  
 Reserves Remaining: 0  
 Total Claims: 1 (all closed)

Premium: \$29,752  
 Based on Receipts: \$4,027,656

**Policy # (11/1/01 – 11/1/02)****TIG Insurance**

Indemnity Paid: 0  
 Expenses Paid: 0  
 Reserves Remaining: 2,000  
 Total Claims: 3 (2 open, 1 closed)

Premium: \$29,752  
 Based on Receipts: Not available